A

AFEEF ABDULQADER MANSOOR v. PENTADBIR TANAH KUALA LUMPUR

COURT OF APPEAL, PUTRAJAYA
AZMAN ABDULLAH JCA
AZHAHARI KAMAL RAMLI JCA
B ALWI ABDUL WAHAB JCA
[CIVIL APPEAL NO: W-01(NCvCVA)-609-08-2022]
3 NOVEMBER 2025

C **Abstract** – *In the assessment of an award of compensation for acquisition of land, damages sustained or likely to be sustained must be assessed at the time of the Land Administrator's taking possession of the land by reason of the acquisition. If a damage did not arise from a land acquisition, it is unnecessary to consider the issue of injurious affection as it would only be relevant to be determined if the applicant is able to establish that the damage suffered resulted from the Land Administrator's possession of the land pursuant to the acquisition. Losses arising outside the scope of the acquisition falls beyond the jurisdiction of a land reference proceeding.*

D

E ***LAND LAW:*** *Acquisition of land – Award of compensation – Whether adequate – Building on land demolished due to landslide before acquisition – Whether applicant ought to be compensated for building erected on land before occurrence of landslide – Whether applicant's loss as result of landslide considered as injurious affection – Whether damage sustained by reason of acquisition – Losses arose outside scope of acquisition – Whether fell beyond jurisdiction of proceedings – Whether extent of damage and losses could be properly ascertained and assessed – Land Acquisition Act 1960*

F

G This was an appeal by the appellant/applicant ('applicant') against the decision of the High Court in dismissing the appellant's land reference for the acquisition of the land ('scheduled land'). At all material times, it was not disputed that the building on the scheduled land was demolished in 2012 after severely being affected by the collapse of a concrete embankment due to a landslide and it was 16 months before the acquisition was gazetted. Before the incident, the 967sqmt scheduled land area had a renovated double-
H story detached house with a swimming pool on it. The demolition work was done by Dewan Bandaraya Kuala Lumpur ('DBKL') and since then, the scheduled land was left barren/vacant by the applicant. On 1 April 2014, the Land Administrator acquired the scheduled land under s. 8 of the Land Acquisition Act 1960 ('Act') for the purpose of repairing and rehabilitating
I the condition of the hill slope. Following enquiries, the Land Administrator on 10 June 2014 awarded compensation for a sum of RM2,790,000 for the

scheduled land with another RM100,000 awarded for the cost of moving and other miscellaneous costs, making the total award of RM2,890,000. Dissatisfied with the amount, the applicant accepted the award under protest and subsequently filed the requisite Form N on the grounds that he ought to have been compensated for the house and the contents therein that was erected/stood on the said land before the occurrence of the landslide. The applicant also filed Form O to refer the matter to the court claiming for the same additional compensation for the alleged loss of the building and the chattels. The land reference was first heard before a High Court Judge on 11 December 2017 where the applicant's objections were dismissed and it was ordered that the Land Administrator's award be maintained. This case went to appeal at the Court of Appeal in which the appeal was also dismissed. Dissatisfied, the applicant further appealed to the Federal Court. The Federal Court allowed the appeal and ordered remittance to the High Court on the reason that there had been non-compliance with s. 40C of the Act. As s. 40C was mandatory, the failure to comply with it required that the matter be remitted for re-hearing before a judge of the High Court. Upon the matter being re-heard by another High Court Judge, the applicant's claim was again dismissed and the Land Administrator's award was upheld. Hence, this appeal. The issues that arose were (i) whether the Land Administrator's award of compensation was adequate in which according to the applicant, he should be compensated not only with the value of the scheduled land but also the value of the applicant's residential building including its contents that the applicant lost as a result of the landslide incident and the compulsory acquisition of the subject property by the respondent; (ii) whether the applicant's loss as a result of the landslide incident could be considered as injurious affection and should be taken into consideration in assessing the award of the compensation; and (iii) whether land reference proceeding was a proper forum to decide any losses that arose due to the landslide which happened prior to the acquisition and whether such losses could be taken into consideration in assessing the compensation.

Held (dismissing appeal)

Per Azman Abdullah JCA delivering the judgment of the court:

(1) The provision in the Act particularly s. 2(d) of the First Schedule of the Act was clear, plain and unambiguous. The applicant had to prove that the damage he sustained or likely to be sustained must be assessed at the time of the Land Administrator's taking possession of the land by reason of the acquisition before it can be considered to have been injuriously affecting his other property. This court could not agree with the applicant that DBKL or the Land Administrator had entered and damaged the scheduled land or structures on it prior to acquisition, and as such, the compensation must reflect full indemnity, including the cost of loss prior to gazetting. This was because, such position was not in line

with the Act. Thus, this court was bound to give effect to the said meaning. 'Damage sustained by reason of the acquisition' was the keyword. The loss of the building on the scheduled land due to landslide could not be considered as an 'injurious affection.' (paras 46-48)

(2) The loss with regard to the applicant's residential building including its contents was a result of the landslide incident and not due to the land acquisition. Therefore, in such event, it did not meet the requirement under s. 2(d) of the First Schedule of the Act in which the damage sustained or likely to be sustained must be assessed at the time of the Land Administrator's taking possession of the land by reason of the acquisition before it can be considered to have been injuriously affecting his other property. The applicant's claims could not be entertained. The land acquisition occurred 16 months after the landslide incident. From the appeal records, nothing could prove that the landslide was caused by any negligence or fault on the part of DBKL. (paras 50 & 51)

(3) Since the damage did not arise from the land acquisition, it was unnecessary to further consider the issue of injurious affection. The question of injurious affection would only be relevant to be determined if the applicant was able to establish that the damage suffered resulted from the Land Administrator's possession of the land pursuant to the acquisition. The extent of the damage and losses could not be properly ascertained and assessed within the land reference proceeding due to the absence of sufficient evidence. The matters to be considered in assessing compensation for land acquisition are clearly stipulated in the Act. Losses arising outside the scope of the acquisition fell beyond the jurisdiction of these proceedings. (paras 51 & 52)

Case(s) referred to:

AXA Affin General Insurance Bhd v. K Thanarajah Kanagaratnam [2016] CLJU 889; [2016] 1 LNS 889 HC ***(refd)***

Che Som Che Mat v. Pentadbir Tanah Daerah Kerian [2014] 1 CLJ 575 HC ***(refd)***

Edwards v. Minister Of Transport [1964] All ER 483 ***(refd)***

Pentadbir Tanah Daerah, Gombak lwn. Huat Heng (Lim Low & Sons) Sdn Bhd [1991] 1 CLJ 16; [1991] 1 CLJ (Rep) 356 SC ***(refd)***

Re M A Namazie, Deceased [1960] CLJU 111; [1960] 1 LNS 111 HC ***(refd)***

Re Robinson's; Portuguese Missions In China At Singapore & Ors v. Collector Of Land Revenue, Singapore [1977] CLJU 108; [1977] 1 LNS 108 HC ***(refd)***

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(refd)***

Shaik Sahib Omar Abdullah Omar Makarim v. The Municipal Commissioners [1932] CLJU 75; [1932] 1 LNS 75 HC ***(refd)***

Wintercorn Malaysia Sdn Bhd v. Ketua Pengarah Kastam & Anor [2025] 9 CLJ 206 FC ***(refd)***

Legislation referred to:
Federal Constitution, art. 13
Land Acquisition Act 1960, ss. 1(1)(b), (2C), 2(d), 8, 40C, 40D(3), 49(1), First Schedule

For the appellant - Muhammad Shafee Abdullah & Magdalene Wong Sui Hua; M/s Shafee & Co
For the respondent - Iskandar Zulkarnaen Che Mohd Nor & Nurul Atikah Asharaf Ali; SFCs

[Editor's note: For the High Court judgment, please see Afeef Abdul Qader Mansor lwn. Pentadbir Tanah Wilayah Persekutuan [2017] CLJU 2097; [2017] 1 LNS 2097 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Azman Abdullah JCA:

Introduction

[1] This is an appeal by the appellant/applicant against the decision of the High Court dated 3 August 2022 whereby the learned High Court Judge ("the learned HCJ") had dismissed the appellant's land reference for the acquisition of the land known as Lot 25900, Mukim Setapak, Kuala Lumpur ("scheduled land").

[2] At the High Court, the appellant seeks for additional compensation for the market value of the house and supposed injurious affection owing to the loss of the building and numerous chattels erected on the said scheduled land. Aggrieved by the decision of the High Court, hence this appeal.

[3] We heard the appeal on 30 May 2025 and we now give our decision. For ease of reference, parties will be referred to as they were in the High Court. The appellant will be referred to as the applicant and the respondent, Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur will be referred to as the Land Administrator.

Background Facts

[4] At all material times, it is not disputed that the building on the scheduled land was demolished in 2012 after being severely affected by the collapse of a concrete embankment in Bukit Setiawangsa due to a landside and it was 16 months before the acquisition was gazetted in 2014. Before the incident, the 967sqmt scheduled land area had a renovated double-story detached house with a swimming pool on it. The demolition work was done by Dewan Bandaraya Kuala Lumpur ("DBKL") and since then, the scheduled land was left barren/vacant by the applicant.

[5] On 1 April 2014, the Land Administrator acquired the scheduled land under s. 8 of the Land Acquisition Act 1960 (Act 486) ("the Act") for the purpose of repairing and rehabilitating the condition of the hill slope (Projek Memperbaiki Runtuhan Cerun di Jalan Puncak Setiawangsa 2, Setiawangsa, Kuala Lumpur). Following enquiries on 14 May 2014 and 10 June 2014, the Land Administrator on 10 June 2014 awarded compensation for a sum of RM2,790,000 for the scheduled land with another RM100,000 awarded for the cost of moving and other miscellaneous costs, making the total award of RM2,890,000.

[6] Dissatisfied with the amount, the applicant accepted the award under protest and subsequently filed the requisite Form N on the grounds that he ought to have been compensated for the house and the contents therein that was erected/stood on the said land before the occurrence of the landslide. The applicant also filed Form O to refer the matter to the court claiming for the same additional compensation for the allegedly loss of the building and the chattels.

[7] The land reference was first heard before the learned High Court Judge, Nordin Hassan J (as he then was) on 11 December 2017 where the applicant's objections were dismissed and it was ordered that the Land Administrator's award dated 10 June 2014 be maintained. This case went to appeal at the Court of Appeal in which the appeal had also been dismissed. Dissatisfied, the applicant further appealed to the Federal Court. The Federal Court had allowed the appeal and ordered remittance back to the High Court on the reason that there has been non-compliance with s. 40C of the Land Acquisition Act 1960. As s. 40C is mandatory, the failure to comply with it requires that the matter be remitted for re-hearing before a judge of the High Court.

[8] Upon the matter being re-heard by another learned HCJ, the applicant's claim was again dismissed and the Land Administrator's award was upheld.

Decision Of The High Court

[9] From the grounds of the learned HCJ, the essence of her decision was premised on the following:

(i) the applicant's valuer, TD Aziz Sdn Bhd of its valuation report dated 29 April 2014 opined that the loss of the building is an injurious affection which ought to be compensated at the value of RM1,400,000. Nonetheless, the said valuer did not expand further on any justification save for the lone fact that the building was demolished prior to the acquisition;

(ii) on the contrary, the Government valuer opined that there was no injurious affection owing to the fact that the scheduled land was already vacant and barren *circa* 2012 due to demolition and prior to acquisition;

(iii) the loss of the building cannot be classified as an injurious affection under the Act. The actual definition of "injurious affection" is far more distinct and specific as elucidated in s. 2(d) of the First Schedule of the Act as follows:

> the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner;

(iv) upon examination of the above provision, the criteria of an "injurious affection" also includes:

(a) a stipulation as to time (of possession);

(b) a stipulation as to the specific person taking possession (being the Land Administrator); and

(c) a stipulation as to the reason of the possession (being the acquisition);

(v) thus, can the loss of the building on the scheduled land due to landslide be considered as an "injurious affection"? The learned HCJ answered in a resounding negative, simply because of the following:

(a) it is clear that by the time the Land Administrator took formal possession of the scheduled land on 25 August 2014 (based on Form K), the building was no longer there and the scheduled land was entirely barren;

(b) the Land Administrator was far removed and altogether not involved at the time of the DBKL's possession when the building was demolished; and

(c) the DBKL's possession at the time of demolition is not a land acquisition under the Act. There was no land acquisition whatsoever at the time when DBKL took possession of the subject land and subject building *circa* 2012;

(vi) it is astoundingly obvious that the alleged loss of the subject building cannot be fashioned as an injurious affection to be claimed under the Act and in the present land reference proceeding;

(vii) apart from wrongly classifying the loss of subject land as injurious affection, the applicant has also mounted the claim for damages for loss of the subject building against the wrong party. It is to be reminded that the loss of the subject building is not the acquisition but the unfortunate landslide;

(viii) land reference proceeding is an improper forum to decide any losses that arose due to the landslide as this would be an issue of liability and not all a matter of evaluation or assessment of compensation;

(ix) upon proper consultation and examination of both the Government and private assessor's opinions, the High Court found that the applicant is not entitled to claim any compensation for the loss of the subject building (due to landslide);

(x) section 1(1)(b) of the First Schedule and s. 8 of the Act clearly stipulates that market value shall be assessed or determined at the date when the scheduled land was gazetted to be compulsory acquired. Thus, since the subject building and all the alleged chattels within it were all no longer in existence at the time of the acquisition, it is incumbent upon the court to value the land as vacant and barren land. The same reasoning would apply the applicant's non-entitlement to any compensation for injurious affection under s. 2(d) of the First Schedule of the Act; and

(xi) the applicant's claim for additional compensation is dismissed. The Land Administrator's market valuation of the scheduled land with only 10% stigma (due to the landslide) is sufficiently gracious and compensatory. Hence the Land Administrator's award is upheld. The fees of the two assessors at RM1,000 shall be paid by the applicant. The deposit of RM3,000 shall be returned to the applicant.

The Appeal

[10] The grounds of appeal as per the memorandum of appeal stated as follows:

1. Hakim Mahkamah Tinggi Yang Bijaksana telah terkhilaf di dalam undang-undang apabila menolak Rujukan Tanah Perayu.
2. Hakim Yang Bijaksana telah terkhilaf di dalam undang-undang apabila membuat mengambilkira dan bergantung kepada keputusan-keputusan dan dapatan-dapatan oleh Mahkamah Tinggi dan Mahkamah Rayuan yang telah diketepikan oleh Mahkamah Persekutuan.
3. Hakim Yang Bijaksana telah terkhilaf di dalam undang-undang apabila membuat dapatan bahawa Perayu memohon gantirugi terhadap pihak-pihak yang salah dan dibawah klasifikasi ganti rugi yang salah.
4. Hakim Yang Bijaksana telah terkhilaf di dalam undang-undang apabila membuat dapatan bahawa kehilangan struktur rumah Perayu tidak boleh diklasifikasikan sebagai "injurious affection" dan tidak boleh dipohon ganti rugi melalui proses Rujukan Tanah.

5. Hakim Yang Bijaksana telah terkhilaf di dalam undang-undang apabila membuat dapatan bahawa definisi perkataan "possession" di bawah Seksyen 2(d) Jadual Pertama Akta Pengambilan Tanah 1960 hanya mengikat "Land Administrator" dan hanya berkaitan dengan "Land Acquisition". A

6. Hakim Yang Bijaksana telah terkhilaf di dalam undang-undang apabila membuat dapatan bahawa pampasan yang diberikan antara lain hendaklah terhadap kerosakan harta alih atau tidak alih semasa Pentadbir Tanah mengambil milik tanah tersebut sahaja. B

7. Hakim Yang Bijaksana telah terkhilaf di dalam undang-undang apabila gagal untuk mengambilkira bahawa pengambilan wajib tanah berjadual adalah disebabkan oleh kejadian tanah runtuh yang telah memusnahkan sebahagian daripada bangunan di atas tanah subjek pada 28.12.2012. C

8. Hakim Yang Bijaksana telah terkhilaf di dalam fakta dan/atau undang-undang apabila beliau gagal untuk menghargai bahawa pihak pemohon dalam Pengambilan Wajib tersebut iaitu DBKL merupakan pihak yang sama yang telah memasuki tanah berjadual dan memusnahkan keseluruhan bangunan yang terletak di atas tanah subjek pada 31.12.2012 tanpa sebarang kebenaran daripada Perayu. D

9. Hakim Yang Bijaksana telah terkhilaf di dalam fakta dan/atau undang-undang apabila gagal untuk menghargai bahawa pampasan yang diberikan mestilah "memadai" selaras dengan Perkara 13(1) Perlembagaan Persekutuan dan kes *Tan Yen Foon v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2008] 7 CLJ 267. E

10. Hakim Yang Bijaksana telah terkhilaf di dalam fakta dan/atau undang-undang apabila gagal untuk menghargai bahawa jika tidak kerana kejadian tanah runtuh, maka tidak akan ada pengambilan secara paksa tanah berjadual tersebut dan pihak DBKL tidak akan memusnahkan bangunan tersebut. F

11. Hakim Yang Bijaksana telah terkhilaf di dalam fakta dan/atau undang-undang apabila menolak gagal untuk menghargai bahawa awad yang diberikan kepada Perayu adalah tidak memadai kerana pampasan tidak diberikan kepada bangunan tersebut G

12. Hakim Yang Bijaksana telah terkhilaf di dalam fakta dan/atau undang-undang apabila membuat dapatan bahawa Perayu tidak layak untuk mendapat pampasan bagi rumah dan isi kandungannya seperti yang telah dipohon. H

13. Hakim Yang Bijaksana telah terkhilaf di dalam fakta dan/atau undang-undang apabila gagal menghargai bahawa tanah subjek adalah merupakan tanah hanya untuk tujuan kediaman sahaja.

14. Hakim Yang Bijaksana telah terkhilaf di dalam fakta dan/atau undang-undang apabila gagal menghargai bahawa akibat daripada pengambilan tanah wajib tersebut, Perayu telah terhalang daripada memiliki satu tanah kediaman. I

15. Hakim Yang Bijaksana telah terkhilaf di dalam fakta dan/atau undang-undang apabila gagal mengambilkira prinsip reinstatement seperti yang dinyatakan di dalam seksyen 1(2C) of the First Jadual Pertama Akta Pengambilan Tanah 1960.

16. Pihak Perayu memohon kepada Mahkamah yang mulia ini untuk membenarkan rayuan ini dengan kos.

Submissions Of The Parties

[11] It is the submission of the applicant that the applicant should be compensated not only with the value of the land but also the value of the applicant's residential building including its contents that the applicant loss as a result of the landslide incident and the compulsory acquisition of the subject property by the respondent.

[12] The applicant further argued that the Land Administrator's award of compensation is inadequate.

[13] According to the counsel of the applicant, the learned HCJ has misdirected herself when she relied on the decision of the High Court and Court of Appeal which was subsequently overturned by the Federal Court and the matter was reverted back to the High Court.

[14] Besides, the applicant also submitted that the learned HCJ erred in fact and/or in law when she dismissed the applicant's claim on injurious affection as it is not claimable through a land reference proceeding. In this regard, according to the applicant, the learned HCJ has failed to observe the principles of natural justice, in which, to determine the market value and the quantum of compensation, the Land Administrator certainly performs *quasi*-judicial functions whereby the Land Administrator must follow the basic principles of natural justice.

[15] The learned counsel of the applicant has directed our mind to the fact that the express condition of the scheduled land is only for residential purpose. The compulsory acquisition deprives the applicant's ownership of a residential land. Thus, it is the applicant's submission that the applicant's position ought to be reinstated to his original position where the value of the house ought to be compensated to enable the applicant to purchase another residential land of similar characteristic in consonant with s. 1(2C) of the First Schedule of the Act.

[16] The counsel for the applicant cited the recent celebrated decision of the Federal Court in the case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526 which explained on what adequate compensation for a person is who has been deprived of his or her property. Another case cited was the case of *Re MA Namazie, Deceased* [1960] CLJU 111; [1960] 1 LNS 111; [1969] 26 MLJ 252, whereby the potentiality of the acquired land was taken into account and the court had increased the award based on these criteria.

[17] On the issue of injurious affection, learned counsel for the applicant submitted that the learned HCJ has misdirected herself at para. 12 of the grounds of judgment when she failed to consider other cases which gave injurious affection due to a landslide.

[18] According to the applicant, the term "injurious affection" is not defined anywhere in the statutes, specifically in the Act. However, injurious affection is used in a number of common law statutes. The interpretation of this term has been undertaken in a number of English cases. In the case of *Edwards v. Minister Of Transport* [1964] All ER 483 in which Harman LJ described injurious affection as follows:

> This appeal is concerned with injurious affection, a piece of jargon having a respectable pedigree and prolific of litigation in our courts for a century or more, but none the better, I think, when embellished with the epithet which it acquired during the hearing when it was styled "pure injurious affection". It is not emotion, but an effect which is being described.

[19] The counsel of the applicant further cited the case of *Re Robinson's; Portuguese Missions In China At Singapore & Ors v. Collector Of Land Revenue, Singapore* [1977] CLJU 108; [1977] 1 LNS 108; [1978] 1 MLJ 5. In this case, where building on the land acquired is devastated by fire, it has been held that the market value of the land before its devastation must be considered.

[20] As such, it was submitted that the applicant should not be penalised and/or prejudiced from receiving adequate compensation for the land, building and its contents prior to the landslide.

[21] With regard to the issue of whether or not the appellant is entitled to claim against the Land Administrator for the loss of subject land due to the landslide in 2012, the applicant submitted that the learned judge has erred in fact and/or in law when she failed to properly consider the applicant's assessors valuation of the land and merely focused on the Government assessor's valuation. The counsel referred to the case of *Shaik Sahib Omar Abdullah Omar Makarim v. The Municipal Commissioners* [1932] CLJU 75; [1932] 1 LNS 75; [1932] 1 MLJ 53 in which according to the counsel for the applicant, this case extends the scope/definition of injurious affection. It was held as follows:

> The term "injurious affection" is used in the cases quoted and the word "damages" is the term used in our section. The Plaintiff contends (I think rightly) that they are to all intents and purposes synonymous. It seems to me reasonable to regard "injurious affection" as a synonym of Damages. Injury may be "*sine damno*" or may result in damages. It is only where it results in damages that any substantial claim can arise under the Acts quoted above.

[22] The applicant also brought to our attention the case of *Che Som Che Mat v. Pentadbir Tanah Daerah Kerian* [2014] 1 CLJ 575; [2013] MLJU 1595 in which the court allowed claim for compensation for the damage to crops caused by the floods arising from the excavation works on the project.

[23] According to the applicant, DBKL came into the appellant's property to entirely demolish what was left of the structure after the landslide and it is the same Local Authority who applied for the scheduled land to be acquired. Therefore, it was submitted that the Local Authority is immensely involved in the whole process of the land acquisition. The act of DBKL demolishing the applicant's house must be governed or protected by the relevant statute, *ie*, the Local Government Act 1976 or the Street, Drainage and Building Act 1974 and as a result, the applicant is barred from taking any kind of legal action towards DBKL.

[24] Counsel for the applicant further argued that the Land Administrator did not comply with the mandatory provisions of the Act, specifically regarding the issuance of Forms A and K. They also claimed that the purpose for acquiring the land had changed from what was declared in the *Gazette* notification and according to the applicant, the entire acquisition process was *mala fide*, meaning it was done in bad faith, and it breached the appellant's legitimate expectation that the respondent would act in accordance with their lawful powers and duties.

[25] At the end of the submission by the applicant, they submitted that the right for a fair compensation to the landowner in a compulsory acquisition is a constitutional right. It was submitted that had the landslide not happened, the Local Authority would not have demolished the applicant's property on the land and the applicant's land would not have been compulsorily acquired.

[26] On the other hand, counsel for the respondent submitted that the law on injurious affection as stated in s. 2(d) of the First Schedule of the Act is clear and unambiguous from the wording and the context it was crafted by the legislative. The court simply cannot transcend beyond what was plainly codified under the Act, otherwise it may defeat the whole purpose of the said provision.

[27] According to the learned Federal Counsel for the respondent, in the context of land acquisition, the person taking possession is the Land Administrator and no one else, as the wording in the provision literally and plainly states "at the time of the Land Administrator's taking possession of the land by reason of the acquisition". In this present case, the Land Administrator took formal possession of the scheduled land on 25 August 2014 *vide* Form K. The date of *Gazette* could be regarded as a cut-off date for whatever claims or damages that may or might have arisen prior to the land

acquisition. Thus, whatever damages sustained or likely to sustain before or after the *Gazette* (1 April 2014) should not be taken into consideration. The Federal Counsel cited the Supreme Court's decision in the case of *Pentadbir Tanah Daerah, Gombak lwn. Huat Heng (Lim Low & Sons) Sdn Bhd* [1991] 1 CLJ 16; [1991] 1 CLJ (Rep) 356; [1990] 3 MLJ 464, where Hashim Yeop Sani CJM (as he then was), held that the date to be taken to assess market value of the land is the date the land was gazetted under s. 8 of the Act.

[28] The learned Federal Counsel contended that the applicant's claim for damages for the loss of subject land and its chattels at the time the land was not in the possession of the Land Administrator should not be considered as it does not fit within the definition of injurious affection as enunciated in s. 2(d) of the First Schedule of Act. It was further submitted that in principle, any claims for injurious affection shall be allowed the moment the landowner suffered damages due to the land acquisition. However, the subject building was damaged due to the landslide incident and it was demolished by DBKL prior to the land acquisition. At the time the formal *Gazette* was issued on 1 April 2014, for the purpose of land assessment, the subject building and its chattels were no longer in existence.

[29] The learned Federal Counsel rebutted the applicant's contention that the land acquisition would not be carried out and DBKL would not proceed to demolish the subject building if it was not because of the landslide. According to the learned Federal Counsel, it is undisputed fact that the land acquisition was carried out for the purpose of reparation work post landslide incident as stated in the *Gazette*. The subject building was partially damaged due to a major landslide and DBKL had to demolish the remnants of the subject building for safety and security reasons. Even without DBKL proceeding to demolish the subject building and assuming that the land acquisition was not carried out by the Land Administrator, the subject building already has been destroyed (due to a major landslide) and no longer safe to be occupied by the applicant.

[30] On the issue of the compensation awarded to the applicant, the learned Federal Counsel referred to the provisions of ss. 40D(3) and 49(1) of the Act and cited the case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561 to explain on the application of both the provisions. It was submitted that based on that case, allowing questions of law to be posed on compensation in appeals should not mean or entail the same process of re-hearing where the Court of Appeal or the Federal Court "review the inferences and conclusions of the High Court and to draw its own inferences and conclusions" in relation to valuation. Otherwise, it would undermine the plain intent of the proviso to s. 49(1) of the Act and render the intent of Parliament meaningless and the courts be accused of rewriting the law.

[31] Therefore, according to the respondent, most of the questions raised by the applicant in the memorandum of appeal have been judiciously considered by the learned HCJ and it was clear from her grounds of judgment. The learned HCJ has evaluated the applicant's grievance and concluded that the applicant is not entitled to compensation for the subject building and its contents therein. This question is purely on facts which ought not to be entertained by this court. The respondent is of the view that the compensation awarded is adequate, sufficient and reasonable, considering at the time when the subject land was formally acquired or possessed by the Land Administrator, by virtue of s. 1(1)(b) of the First Schedule of the Act for the purpose of assessment at the time when the *Gazette* was published on 1 April 2014, the scheduled land was left barren of any structure or building erected onto it.

[32] On the next issue that DBKL entering the subject land prior to the acquisition and demolishing the subject building is the same party that apply for the compulsory acquisition, it was submitted by the learned Federal Counsel that neither DBKL was made as a party in the present land reference proceeding nor any witnesses were called to testify in the court previously by the applicant, thus, that would be wrong and unfair to assume the liability entirely on the respondent. The respondent was not in the picture at the time when the unfortunate landslide occurred that led to the demolition of the subject building by DBKL. The applicant cannot simply liken and presume the DBKL and the respondent to be one and the same entity in the present land reference proceeding just to pin the liability on the respondent for the loss that the appellant suffered prior to the compulsory acquisition.

[33] On the issue of damages claimed by the applicant, the respondent submitted that the damages sought by the appellant in the present case against the respondent is no other than the injurious affection for the loss of the subject building and the chattels contained therein. No evidence in so far as has showed that the respondent is responsible for demolishing the subject building and the loss of the chattels were due to the acquisition. For it to be considered under injurious affection, the applicant bears the burden of proof that in actuality, the respondent is the one that in possession of the subject land at the time when the subject building was demolished together with the chattels contained therein. Eventually, it must fulfil the test/requirement under s. 2(d) of the First Schedule of the Act, which the applicant failed to do so.

[34] With regard to the issue that learned HCJ relied on the findings made by the High Court and Court of Appeal previously on the same case that was set aside by the Federal Court upon remittance, the respondent submitted that, since the merits of the case were left undisturbed, there is still sound wisdom in the decisions made by the Court of Appeal and the High Court previously, which it is not judicially wrong for the learned judge to take it into her cognisance in arriving at her decision.

[35] Lastly, on the right of the applicant to own the residence has been deprived and the principle of reinstatement by virtue of s. 1(2C) of the First Schedule of the Act, the learned Federal Counsel submitted that despite the fact that the condition of the subject land is only for residential use, it does not restrain the Land Administrator to compulsorily acquire the land for public purpose as stated in the *Gazette*. In land acquisition case, the right of the landowner cannot simply be said has been deprived merely because of the compulsory acquisition. The landowner will be compensated accordingly based on the principle of equivalence as embedded in the case of *Semenyih Jaya* (*supra*).

[36] In the present case, the respondent submitted that the applicant has not been deprived of his right to own a house. In fact, the applicant was compensated fairly based on the principle of equivalence. Taking into consideration that the landslide has occurred and unfortunately destroyed the subject building, the land is valued as what it is at the time the land was compulsorily acquired. The applicant cannot expect that he may get compensated for the subject building and its chattels that no longer in existence at the time of acquisition or taking of his land, otherwise it may go against the principle of equivalence. Any losses sustained prior to the acquisition should be disregarded and should not be taken into account in determining a fair and reasonable compensation.

[37] Learned counsel for the applicant in their reply submission submitted that the damage in the building and the loss of the chattels was not due to natural causes alone but directly connected to a sequence of events culminating in the acquisition. Thus, injurious affection can arise from an entire acquisition process, not merely from the act of formal possession. The issues raised by the appellant are not mere questions of fact or quantum, but concern errors of law and failures of legal principle in the assessment of compensation, which fail squarely within the definition of "question of law" as explained in *Semenyih Jaya Sdn Bhd* (*supra*).

[38] According to learned counsel of the applicant, s. 49 of the Act clearly gives the High Court jurisdiction to determine any question relating to compensation, including the quantum and basis for compensation, which necessarily includes determining causation or liability for damage where such issues affect compensation. Besides, it is not important whether DBKL is formally named as a party in this case. What matters is the legal effect of their actions, especially since they acted for the benefit of the acquiring authority. They referred to the case of *AXA Affin General Insurance Bhd v. K Thanarajah Kanagaratnam* [2016] CLJU 889; [2016] 1 LNS 889; [2016] MLJU 547 which held that, in subrogation claims, the courts permit the insured to seek recovery from third parties even when they are not parties to the original indemnity.

[39] Therefore, in land reference proceedings, according to the applicant, the goal is not to prove legal fault like in a tort case. The court only needs to assess what compensation is fair under the Act, and to do that, it must consider all the facts, including any damage caused by DBKL or those acting for the acquiring authority. If public authorities, including DBKL or the Land Administrator who had entered and damaged the land or structures prior to acquisition, the compensation must reflect full indemnity, including the cost of loss prior to gazetting.

[40] Learned counsel for the applicant argued that to say that the applicant cannot refer to DBKL's actions just because DBKL is not named in this case is to focus too much on technicalities and that would unfairly allow public authorities to avoid responsibility by hiding behind procedure.

Our Decision

[41] Having duly considered the appeal records and submissions of the counsels, we unanimously dismiss the appellant's appeal. Our reasons now follow.

[42] With regard to this appeal, we bear in mind that the law regulating the process of land acquisition is provided for under the Land Acquisition Act 1960 in which it allows the State Authority to acquire private land for public purposes, economic development, or other listed objectives, in line with art. 13 of the Federal Constitution which guarantees property rights and adequate compensation. The principles relating to the determination of compensation is encapsulated under the First Schedule of the Act.

[43] We have considered the appeal and we are of the view that the main issues in this appeal are as follows:

(i) whether the Land Administrator's award of compensation is adequate in which according to the applicant, he should be compensated not only with the value of the land but also the value of the applicant's residential building including its contents that the applicant's loss as a result of the landslide incident and the compulsory acquisition of the subject property by the respondent;

(ii) whether the applicant's loss as a result of the landslide incident can be considered as injurious affection and would be taken into consideration in assessing the award of the compensation; and

(iii) whether land reference proceeding is a proper forum to decide any losses that arose due to the landslide which happened prior to the acquisition and whether such losses can be taken into consideration in assessing the compensation.

[44] We will discuss issue (i) and (ii) together as it relates to the assessment of the award of compensation.

[45] It is clear from the fact that the applicant was awarded the sum of RM2,890,000 as a compensation for the acquisition of the scheduled land by the Land Administrator. However, according to the applicant, this amount is inadequate as it should include the value of the applicant's residential building including its contents that the applicant's loss as a result of the landslide incident.

[46] In this regard, we have considered the finding of the learned HCJ and we agree with her that the loss of the building on the scheduled land due to landslide could not be considered as an "injurious affection". The provision in the Act particularly s. 2(d) of the First Schedule of the Act is clear, plain and unambiguous. For easy reference, s. 2 of the First Schedule of the Act is stated as follows:

> Matters to be considered in determining compensation
>
> 2. In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:
>
> (a) the market value as determined in accordance with section 1 of this Schedule;
>
> (b) any increase, which shall be deducted from the total compensation, in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;
>
> (c) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of severing such land from his other land;
>
> (d) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner;
>
> (e) if, in consequence of the acquisition, he is or will be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and
>
> (f) where only part of the land is to be acquired, any undertaking by the State Authority, or by the Government, person or corporation on whose behalf the land is to be acquired, for the construction or erection of roads, drains, walls, fences or other facilities benefiting any part of the land left unacquired, provided that the undertaking is clear and enforceable.

[47] Based on the above provision, it is clear that the applicant had to prove that the damage he sustained or likely to be sustained must be assessed at the time of the Land Administrator's taking possession of the land by reason of the acquisition before it can be considered to have been injuriously affecting his other property.

[48] We could not agree with learned counsel of the applicant that DBKL or the Land Administrator had entered and damaged the scheduled land or structures on it prior to acquisition, and as such, the compensation must reflect full indemnity, including the cost of loss prior to gazetting. This is because, such position is not in line with the Act. As we mention before, the provision in s. 2(d) of the First Schedule of the Act is clear, plain and unambiguous. Thus, this court is bound to give effect to the said meaning. "Damage sustained by reason of the acquisition" is the keyword. We cannot add further to this. The damage sustained due to other reason is not covered by the Act.

[49] It is a settled principle that when the words in a statute are clear, plain and unambiguous and the only one meaning can be inferred, the courts are bound to give effect to the said meaning. In this regard, we refer to the Federal Court decision in the case of *Wintercorn Malaysia Sdn Bhd v. Ketua Pengarah Kastam & Anor* [2025] 9 CLJ 206; [2025] MLJU 2545 which held as follows:

> [65] The well settled principle is that when the words in a statute are clear; plain and unambiguous and the only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of the consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. Nevertheless, if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation (see *Comms of Customs v. Dilip Kumar & Co* [2018] 9 SCC case 1).

[50] When we analysed the facts of this appeal, at all material times, the applicant admitted that the loss with regard to the applicant's residential building including its contents was a result of the landslide incident and not due to the land acquisition. Therefore, in such event, it does not meet the requirement under s. 2(d) of the First Schedule of the Act in which the damage sustained or likely to be sustained must be assessed at the time of the Land Administrator's taking possession of the land by reason of the acquisition before it can be considered to have been injuriously affecting his other property. For this reason, the applicant's claims cannot be entertained

by this court. The land acquisition occurred 16 months after the landslide incident. In fact, from the appeal records and as correctly argued by the learned Federal Counsel, nothing can prove that the landslide was caused by any negligence or fault on the part of DBKL.

[51] Since the damage did not arise from the land acquisition, we are of the view that it is unnecessary to further consider the issue of injurious affection. The question of injurious affection would only be relevant to be determined if the applicant is able to establish that the damage suffered resulted from the Land Administrator's possession of the land pursuant to the acquisition.

[52] Regarding the issue on whether a land reference proceeding is the appropriate forum to determine losses arising from a landslide which occurred prior to the acquisition, and whether such losses can be considered in the assessment of compensation, we concur with the learned HCJ on this. This is because, the extent of the damage and losses cannot be properly ascertained and assessed within the land reference proceeding due to the absence of sufficient evidence. Furthermore, the matters to be considered in assessing compensation for land acquisition are clearly stipulated in the Act. Losses arising outside the scope of the acquisition fall beyond the jurisdiction of these proceedings.

Conclusion

[53] In the upshot, having perused the appeal records, the grounds of judgment and the submissions by parties and for the reasons mentioned above, we find that there is no merit in the appeal. We upheld the decision of the High Court. As such, the appeal is hereby dismissed with no order as to costs.